

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of Benjamin J. Hart

MUR 5635

BENJAMIN J. HART'S RESPONSE BRIEF

COMES NOW Benjamin J. Hart, by and through his attorney, and requests that the Commission not find probable cause in this matter on the grounds hereinafter set forth:

BACKGROUND

Between 1998 and 2003, Mr. Hart was employed pursuant to a consultant agreement with American Target Advertising (ATA), working primarily as a creative consultant and direct mail copywriter. He also managed a separate entity, Ben Hart & Associates dealing in direct mail advertising services. On many occasions during his association with ATA, Mr. Hart was asked by the owner and chairman of ATA to provide postage loans for ATA's mail programs. Mr. Hart provided these loans, with a competitive interest rate, for many of ATA's clients, a common and accepted practice in the direct mailing industry. The overwhelming majority of those clients were non-profit organizations barred from making political contributions.

To the best of Mr. Hart's recollection, all of the loans he provided to ATA's clients were guaranteed by ATA and all of Mr. Hart's dealings were with ATA. The contracts were between Mr. Hart and ATA, not with the clients. ATA had the contracts with the clients, Mr. Hart was not a direct or original party to those contracts. In the normal course of business, the postage advances and loans would be repaid with interest from the client escrow accounts which ATA managed and controlled. ATA's general counsel and chairman both assured Mr. Hart that these contracts were in compliance with all federal and state laws. Mr. Hart relied upon these

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representations. Furthermore, Mr. Hart has never been sanctioned by the Federal Election Commission, or any other entity, for violating any campaign or election regulation.

ARGUMENT

The Federal Election Campaign Act (Act) states that an individual can not contribute more than \$5,000 in any calendar year to any political action committee. 2 U.S.C. § 441a(a)(1)(C). The Federal Election Commission (Commission) and the Act evolved historically due to the growing concern of corruption in the political process. President Theodore Roosevelt initiated legislation that developed into the precursor of the Act. The statutes were created to “limit the disproportionate influence of wealthy individuals and special interest groups on the outcome of federal elections; regulate spending in campaigns for federal office; and deter abuses by mandating public disclosure of campaign finances.”¹ This historical rationale is still the backbone of the Act today.

The Act states that a loan made by any person *for the purpose of influencing any election for federal office* is a contribution and a prohibited contribution includes “any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services or anything of value.” 2 U.S.C. §§431(8)(A), 441b(b)(2) (emphasize added). Mr. Hart lacked any intent or purpose to influence any election and lacked any personal or financial relationships with CLPAC. He made postal loans to ATA, not directly to CLPAC, in the normal course of business as he had done with many ATA clients. Although he worked as a copywriter for some of the mailings, he had no financial interests or arrangements with ATA’s clients. The clear business relationship

¹ Historical information gathered and quoted from the Federal Election Committee’s website:
http://www.fec.gov/pages/brochures/fecfeca.shtml#Historical_Background

Mr. Hart had with ATA does not and should not fall within the definition of contribution in the Act. It should be further noted that Mr. Hart only provided postal loans through ATA.

The Act governs violations of law that are knowing and willful. U.S.C. §§ 437g(a)(5)(B), (6)(C) and (d)(1). To be knowing and willful, actions must be "taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976). One must know that he is violating the law. FEC v. John A. Dramesi for Congress Committee, 640 F. Supp. 985 (D.N.H. 1986). In this matter, Mr. Hart signed loan agreements charging competitive interest rates with ATA for postal loans. Agreements he had signed in the past with ATA. CLPAC was not a party to those agreements and Mr. Hart carried out these loans to ATA in the normal course of his business. ATA's chairman and general counsel both assured Mr. Hart that these agreements were legally sound. Mr. Hart's actions were strictly business decisions made in the ordinary course of his business relationship with ATA. He did not intend to knowingly and willfully break the law or influence an election.

The matters cited in General Counsel's Brief as indistinguishable from the facts in this matter are clearly discernable. MUR 5173 involved a company, DMFE, that signed a loan agreement not only with a direct mailing agency but also with the political client as well. These loans were to be used for postage, donor lists and other fundraising services. The president of DMFE made several handwritten amendments to the agreement, indicating that he was actively involved with negotiating the loan agreement with the client. DMFE consolidated these loans on several occasions changing material aspects of the repayment structure. These consolidated loan agreements were directly between DMFE and the political client. The direct mailing agency was

no longer a party to the contracts. This was a major factor in finding probable cause in that matter. Mr. Hart's matter is strikingly different. As stated previously, Mr. Hart had no business dealings or loan agreements directly with CLPAC.

Based on the facts in this matter, Mr. Hart would ask that the Commission not to find probable cause and take no further action against Mr. Hart.

BENJAMIN J. HART

By:

Counsel

Steve Briglia, VSB# 29102
Briglia & Hundley, P.C.
10560 Main Street, Suite 314
Fairfax, Virginia 22030
(703) 385-8005
(703) 385-6013 Facsimile

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